

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-13248

Issue No: 2009, 4031



Hearing Date:

May 4, 2011

Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 4, 2011. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On August 4, 2010, claimant filed an application for Medical Assistance benefits alleging disability. Claimant filed a second application in September 27, 2010, for Medical Assistance and State Disability assistance benefits alleging disability. The applications are herein consolidated.
- (2) On October 19, 2010, the Medical Review Team denied claimant's application for Medical Assistance and retroactive Medical Assistance stating that claimant could perform other work.
- (3) On November 3, 2010, the Medical Review Team denied claimant's application for State Disability Assistance.
- (4) On November 8, 2010, the department caseworker sent claimant notice that his application was denied.

- (5) On December 20, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On January 31, 2011, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of light unskilled work. He should avoid unprotected heights and dangerous machinery. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days.
- (7) The hearing was held on May 4, 2011. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (8) This Administrative Law Judge left the record open until June 4, 2011, to allow for this additional medical information. No new medical information was submitted.
- (9) On June 6, 2011, claimant contacted the Administrative Law Judge and requested an extension of time for medical information to be submitted.
- (10) No new information was submitted by July 22, 2011, and the record was closed and this Administrative Law Judge will proceed to decision.
- (11) On the date of hearing claimant was a 43-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 190 pounds. Claimant is a high school graduate and has 5 years of college where he studied environmental studies and social work. Claimant is able to read and write and does have basic math skills and is able to count money.
- (12) Claimant last worked for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] approximately 13 years ago. Claimant left because his family was killed in a car accident. Claimant has also worked as a psychiatric nurse's assistant.
- (13) Claimant alleges as disabling impairments: left shoulder dislocation, soft tissue damage in the knee, seizures, disc dislocation in the neck and the back, closed head injuries, asthma, bi-polar disorder and depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R

400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect

judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the

analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked for approximately 13 years. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that claimant lives with his fiancé in an apartment and he is single with no children under 18 who live with him. Claimant has no income and receives Food Assistance Program benefits. Claimant does have a suspended driver's license and usually catches the bus or walks where he needs to go. Claimant testified that his girlfriend cooks, grocery shops and cleans for him and he doesn't do any outside work and he usually watches TV. Claimant testified that he can stand for 15-20 minutes, can sit for an hour at a time, can walk 5 blocks and is able to squat and tie his shoes but not bend at the waist. Claimant can shower and dress himself but not touch his toes. Claimant testified that he has back problems and knee problems. Claimant stated that his level of pain on a scale from 1-10 without medication is a 9 and with medication is a 6-7. Claimant is right handed and stated that his hands and arms are fine and his legs and feet are fine. Claimant testified that he can carry a gallon of milk and he does smoke 2-3 cigarettes per day and his doctors told him to quit. Claimant testified that he does occasionally drink alcohol but he does not take any drugs. Claimant testified that in a typical day he wakes up and then sits around and lies around and has coffee and goes to the bathroom.

A psychiatric medical report dated [REDACTED] indicates that claimant arrived by cab to his appointment. He was 6' tall and weighed about 175 pounds. He stated that he had lost a lot of weight. His posture and gait were normal. He wore a Baker College t-shirt and flip flops. He had long somewhat stringy hair under a trappers cap. He had a braided pony tail and a beard. His hygiene was marginal. His mannerisms were cooperative and attentive. The claimant's moods were somewhat flat and he had poor eye contact. He demonstrated good contact with reality. He was asked about motivation for the future and he said that he was unsure about his relationship with his friend. He is doubtful about working because of his seizures and he would like to get his Bachelor's Degree. His speech was blunt and circumstantial. He was somewhat hesitant in self expression but worried. There was no evidence of hallucinations, delusions, or obsessive thought. He has never made a suicide attempt. But acknowledged having a passive death wish recently. He stated that he is not at risk for self harm. His moods appeared somewhat flat. He did identify feeling that depression with no motivation. He is discouraged that he cannot drive or operate heavy machinery (exhibit 1 p. 20).

He is upset about being mostly homeless. The claimant was oriented in all spheres he could repeat 4 digits forward and 4 digits backward. In immediate memory he recalled 1-3 objects 3 minutes later. He identified the current president as Bin Laden and then corrected himself and said Obama. He named recent presidents to include Bush and Bush. He stated his date of birth accurately. He named 5 large cities as New York,

Chicago, Atlanta, Anchorage, and Las Vegas. He named some current famous people as Obama, Bruce Willis and Barbara Walters. He identified some events in the news as the war in Iraq and Afghanistan. He was able to perform serial 3's and 7's forward accurately although slow. Serial 7's backward were not attempted. He stated $5*5=25$, $8*7=56$, $9+8=17$, $12-7=5$. He was able to interpret the following proverb the grass is always greener on the other side of the fence by saying be happy with what you got and don't cry over spilled milk was if you make a mistake, don't beat yourself up over it (Exhibit 1, p. 21).

In similarities and difference, he stated that a bush and a tree were alike because they were both vegetation. When asked how they were different he stated that they are different in height. If he found a stamped addressed envelope lying on the ground he stated that he would mail it and if he were the first person to discover a fire in a theatre he would pull the fire alarm. He was diagnosed with depressive disorder and cognitive disorder NOS including memory problems and a closed head injury. His Axis 5 GAF was 48. His prognosis was guarded. The psychologist stated that claimant would benefit from supportive therapy to help him address any cognitive decline related to closed head injury as well as to give him a place to discuss his loss related to the car accident from a couple years ago. He would not be able to manage his own benefit funds (Exhibit 1, pp. 22-23).

A physical examination dated [REDACTED] indicates that claimant was awake, alert and oriented. His blood pressure was 124/74, pulse 108, respiratory rate 20, temperature 36.8. HEENT: head normocephalic and atraumatic. Eyes, the corneas are without lesions. Conjunctivae was clear. Sclerae is white. Pupils are equal measuring 3 millimeters in diameter, round and reactive to light. Mouth and throat were within normal limits. The neck was supple. The chest was clear without any rales or rhonchi. Full expansion is noted bilaterally. The heart is S1 and S2. The abdomen was soft, non-tender. There was no organomegaly. Bowel sounds were positive. There was no rebound or rigidity. Extremities were within normal limits. Claimant was diagnosed with severe anemia for which he was transfused 2 units of packed RBCs (Exhibit 1, p. 36).

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of

proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression, anxiety and bi-polar disorder.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied a gain at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 43), with a more than high school education and an unskilled/semi-skilled work history who is limited to light work is not considered disabled.

It should be noted that claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 9, 2011

Date Mailed: August 11, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

cc:

